

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV425-1-MU
3:95CR5-MU

MARC PIERRE HALL,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER comes before the Court upon Petitioner's Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, transferred from the United States District Court of Connecticut by Order filed September 9, 2005.

After reviewing Petitioner's § 2241 petition, this Court concurs with the United States District Court for the District of Connecticut's conclusion that Petitioner's filing is most properly construed as a motion to vacate, set aside, or correct sentence.¹

As set forth in the United States District Court for the District of Connecticut's September 9, 2005, Order, Petitioner has previously filed a motion to vacate with this Court that was dismissed with the dismissal being affirmed on appeal. In addition, the United States Court of Appeals for the Fourth Circuit has denied motions by Petitioner to file a second or successive

¹ This Court finds that the Court of Appeals for the Fourth Circuit's recent decision in United States v. Emmanuel, 288 F.3d 644 (4th Cir. 2002), is distinguishable because, unlike in the Emmanuel case, this would not be Petitioner's first § 2255 motion. Id. at 650 (no notice required where recharacterization has no adverse impact on movant).

motions to vacate. As Petitioner is well aware, under the Antiterrorism and Effective Death Penalty Act (AEDPA), "a second or successive motion must be certified . . . by a panel of the appropriate court of appeals. . ." 28 U.S.C. § 2255 (1997). Therefore, because this is not Petitioner's first motion to vacate, set aside, or correct sentence, the Petitioner must first certify his claim with the Fourth Circuit Court of Appeals before he can file his successive claim in this District Court.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is **DISMISSED** without prejudice as successive.

Signed: October 25, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

